IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 18500 of 2007(B)

OS.66/2000 of SUB COURT,THRISSUR
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PETITIONER:

T.C.KHALID, AGED 59 YEARS,
S/O.ABOOBACKER, RESIDING AT THEKKANCHERRY HOUSE,
PALUVAI DESOM, P.O.PALUVAI, CHAVAKKAD TALUK,
THRISSUR DIST.

BY ADV. SRI.P.GOPINATH MENON

RESPONDENT:

M/S.LIME CHEMICALS LIMITED,
HAVING ITS REGISTERED OFFICE AT 2ND FLOOR,
PREM ESTATE, SANT SAVATE, CROSS ROAD NO.1,
MAZAGON BYCULLA EAST, MUMBAI-400 010 AND BRANCH
OFFICE AMONGST OTHERS AT S,BHARATI ARTIST COLONY,
VIKAS MARG, DELHI-110092.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE EXTRACT FROM THE REGISTER OF FIRMS.

EXT.P2: COPY OF THE INTERIM ORDER PASSED BY THE HON'BLW DELHI HIGH COURT.

EXT.P3: COPY OF THE ORDER DATED 24.5.2007.

EXT.P4: COPY OF E.A.827/2007 IN E.P.420/2002

EXT.P5: COPY OF THE ORDER OF ATTACHMENT IN DRC 596/SBT/TSR DATED 15.3.2005.

EXT.P6: COPY OF THE ORDER IN E.A.827/2007 IN E.P.420/2002.

RESPONDENTS EXHIBITS:

EXT.R1(a): COPY OF THE APPLICATION NO.E.A.853/2006 IN E.P.420/2002.

EXT.R1(b): COPY OF THE COUNTER AFFIDAVIT.

EXT.R1(c): COPY OF THE ORDER DATED 24.05.2007.

TRUE COPY

P.A. TO JUDGE

M.N.KRISHNAN,J

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W.P.(C).No.18500 of 2007

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Dated this the 4th day of September, 2007

JUDGMENT

This writ petition is preferred against the order of the subordinate judge, Thrissur, in the review application filed. The writ petitioner is the judgment debtor and the court below by an order dated 24.5.2007 found that he is having means to pay and is neglecting to pay the amount and therefore ordered issuance of arrest warrant. Thereafter, the writ petitioner moved a review application E.A.No.827/2007 to review the order dated 24.5.2007 and to hold that he is not having the means to pay. The court on consideration held that review petition lacks merits and dismissed the same. I feel a background of this case is relevant for appropriate determination of the matter to find out the attitude of the writ petitioner. A decree was obtained from the District Court at Delhi and the present writ petitioner preferred an appeal before the High Court of Delhi which granted an interim order of stay on condition that he deposits the amount. The writ petitioner did not deposit any amount and thereby the decree became executable. In the affidavit filed by the decree holder it was contended that the judgment debtor is a

person having assets of more than Rs. 50 lakhs and deriving a monthly income of Rs.50,000/-. The decree holder also moved the application under Order XXI Rule 41(2) of the Code of Civil Procedure calling upon the judgment debtor to furnish the details of his assets. To the said application the judgment debtor filed a counter contending that, " it is submitted that this respondent has no contention that he had no means to pay the decree debt". The main contention raised by him was about the executability of the decree itself. The court below while passing the first order held that the executing court cannot go beyond the decree and found that the decree was executable. It is true that the decree holder did not mount the box correctly so because there has been a specific contention in the counter statement that the judgment debtor is not raising the plea of no means. In spite of the same the court looked into the affidavit of the decree holder to find out the means of the judgment debtor and came to the conclusion of his means. It is that order which was sought to be reviewed and the principle ground was that he had retired from service. It has to be held that the first order itself was passed on 24.05.2007 whereas even according to the writ petitioner he had retired on 17.6.2006. He did not move his

little finger nor did file any additional objections regarding the change of circumstances and only after passing of the order he files an application for review wherein he wants to raise all these contentions. Now I may briefly refer to the scope of review under Order 47 Rule I of the C.P.C. In order to review an order it has to be established that a new important matter or evidence which after the exercise to due deligence, was not within his knowledge or could not be produced by him at the time when the order was so made or on account of some mistake or error apparent on the face of the record or for any other sufficient reason a review can be entertained. As stated by me earlier since he had retired as early as on 17.6.2006 and the order has been passed only on 24.5.2007 if there was change of circumstances certainly he should have raised that contention before passing of the order at the first instance itself. At that time his focus was on the non maintainability of the execution petition and still he did not change his contention that he is not raising the plea of no means so there are absolutely no grounds made out under Order 47 Rule I to review the order passed by the court on 24.5.2007 It has to be understood that the scope of review is a matter which has to be considered meticulously and

it shall not be used indiscriminately for the reason that if such contentions are entertained it will lead to anomalous situation whereby there will not be in finality to any litigation. These principles are to be born in mind while exercising judicial discretion under Order 47 Rule I of the C.P.C. So from the materials available and from the contentions raised I have no hesitation to hold that the court below was justified in dismissing the application for review. Therefore, the writ petition lacks merit and it is dismissed. If there is any earnest intention for the writ petitioner to pay of the amount I give him a breathing time of one month to pay the amount and directed the court below not to execute the warrant of arrest for one month ie., till 4.10.2007 and thereafter may proceed in accordance with law to arrest him as prayed for to the decree holder.

The writ petition is dismissed accordingly.

M.N.KRISHNAN,JUDGE

dvs